

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN W. CARR)

For Appellant: John W. Carr,
in pro. per.

For Respondent: Mark McEvilly
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John W. Carr against a proposed assessment of additional personal income tax in the amount of \$476.02 for the year 1978.

Appeal of John W. Carr

The issue presented by this appeal is whether appellant qualified to file his personal income tax return as a head of household for 1978.

Appellant and his former wife apparently separated and divorced several years prior to 1978. Their son, Dennis, resided with his mother until June 1, 1978, when he moved into appellant's home, where he lived for the remainder of 1978. Appellant supported his son during all of 1978.

Appellant filed his California personal income tax return for 1978 as head of household, claiming his son as the qualifying dependent. Respondent determined that appellant did not qualify for head of household status and issued the proposed assessment. After considering appellant's protest, respondent affirmed the proposed assessment, and this timely appeal followed. After filing this appeal, appellant paid \$114 of the proposed assessment.

Section 17042 of the Revenue and Taxation Code defines the term "head of household." It provides, in pertinent part:

[A]n individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, and ...

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(1) A son . . . of the taxpayer

We have frequently held that in order for the taxpayer's home to be the dependent's principal place of abode, the dependent must occupy that home for the entire taxable year. (Appeal of Stanley T. Cozzens, Cal. St. Bd. of Equal., Dec. 5, 1978; Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977.) Although appellant supported his son during all of 1978, his son did not physically occupy appellant's household during the entire year. Respondent's regulations provide for a "temporary absence due to special circumstances" (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b)(1) (Repealer filed Dec. 23, 1981, Reg. 81, No. 52)), but appellant has not proven the existence of any special

Appeal of John W. Carr

circumstances. Therefore, appellant did not qualify as a head of household.

Appellant argues that he should be permitted to claim head of household status for the part of the year his **son** did occupy his household, but the statute does not provide for this. Appellant also contends he should not be required to pay interest on the amount due.. We must reject this argument since the imposition of interest is mandatory once it has been determined that the proper payment of tax was not made by the date prescribed for payment. (Appeal of John M. Shubert, Cal. St. Bd. of Equal., Sept. 25, 1979; Rev. & Tax. Code, § 18686.)

For the above reasons, we must sustain respondent's action.

Appeal of John W. Carr

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED **AND** DECREED, pursuant to section 18595 of the Revenue **and** Taxation Code, that the action of the Franchise Tax Board on the protest of John **W.** Carr against a proposed assessment of additional personal income tax in the amount of \$476.02 for the year 1978, be and the same is hereby sustained with the understanding that appellant will be **credited** with the amount of his prior payment.

Done at Sacramento, California, this 4th day of **May**, 19**83**, by the State Board of **Equalization**, with Board **Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

- William M. Bennett, Chairman
 Conway H. Collis, Member
- Ernest J. Dronenburg, Jr., Member
 Richard Nevins, Member
_____, Member